

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

In the Matter of the Rehabilitation of ACA Assurance  
Docket No. 06-E-380

**VERIFIED AND ASSENTED TO PETITION FOR LIQUIDATION**

1. Roger A. Sevigny, Commissioner of Insurance for the State of New Hampshire (the "Commissioner") and Rehabilitator of ACA Assurance ("ACA" or "Company"), hereby petitions the Court pursuant to RSA 402-C:4, RSA 402-C:5, RSA 402-C:19 and RSA 402-C:20 for an order terminating the pending rehabilitation of ACA, authorizing the Commissioner to liquidate ACA, appointing the Commissioner Liquidator of ACA, and providing appropriate relief to protect ACA's policyholders, subscribers, contract holders, and the public.
2. The Commissioner states that he is the duly appointed and qualified Commissioner of Insurance of the State of New Hampshire.
3. ACA is a New Hampshire-domiciled fraternal benefit society, subject to the provisions of RSA Chapter 418 and having its principal offices at 55 South Commercial Street, Manchester, New Hampshire 03101. ACA is licensed by, and subject to regulation by, the New Hampshire Insurance Department (the "Insurance Department"). ACA is or was also licensed to do business in several other states, as well as in all provinces in Canada, where ACA operated an extensive Canadian Branch for many years. ACA is not a member of any guaranty fund or association, and its policyholders are, as a result, not entitled to the benefit of proceeds from such funds or associations.

4. ACA is an insurer who is conducting and has conducted insurance business in this State and in the other jurisdictions in which it was licensed, and against whom claims arising from that business may exist now or in the future, pursuant to RSA 402-C:2.

5. ACA has been the subject of two rehabilitation proceedings before this Court, the first of which was initiated by the Commissioner on October 11, 2006. During the initial rehabilitation, Peter A. Bengelsdorf was appointed by the Commissioner and approved by this Court to act as Special Deputy Commissioner for the purpose of rehabilitating ACA. During this initial rehabilitation, the Rehabilitator reduced the insurance liabilities of ACA through certain transactions and negotiated settlements with L'Union Vie Compagnie Mutuelle D'Assurance, a mutual insurer domiciled in the Province of Quebec ("Union Vie"). In addition, certain credit life and credit disability lines of insurance were discontinued and/or reinsured. The Rehabilitator also substantially reduced certain operating expenses of ACA. During February 2007, the board of directors of ACA, in consultation with the Insurance Department, made a determination that ACA's reserves were impaired and authorized an assessment of twelve percent (12%) exclusively on ACA's pre-need life insurance policies (the "Initial Assessment"). The Initial Assessment, which had the effect of reducing across the board the face value and cash surrender values of the assessed policies and thus the associated reserve liability of ACA by twelve percent (12%), permitted ACA to reflect sufficient statutory surplus to exit the initial rehabilitation.

6. ACA's initial rehabilitation was terminated on July 2, 2007 pursuant to an order of this Court. ACA remained subject to an Agreement and Order of Supervision (the "Supervision Order") dated July 2, 2007 between the Commissioner and ACA. The Supervision Order was subsequently amended on two occasions. Mr. Bengelsdorf served as the Insurance Department Representative with respect to the Supervision of ACA from July 2, 2007 until the

reopening of the rehabilitation proceeding in September, 2008. During the period of Supervision, ACA agreed to discontinue its travel insurance business, which offered travel policies to Canadians traveling outside Canada, by way of a sale of the business to TourMed Assistance, Inc. ("TMA"), effective as of June 1, 2008. TMA had managed the travel insurance business for ACA since its inception. The last of ACA's travel insurance policies expired on May 31, 2009 and the one-year claims notice period ended, as to the last such policy, on May 31, 2010. The three-year statute of limitations for any contractual claims ended, as to the last such policy, on May 31, 2012. TMA and the Rehabilitator signed a final settlement agreement on October 29, 2010 confirming the foregoing and that the anticipated dollar value of remaining incurred but not reported claims under such policies was \$0.

7. Under the terms of the Supervision Order, ACA agreed that: "for the duration of this Order it will maintain its surplus at a minimum level of \$3,000,000 at all times and that the failure to maintain the surplus at this minimum level shall, without more, give the Commissioner the right to immediately move to place ACA back into rehabilitation pursuant to RSA Chapter 402-C...". At least two-thirds (2/3) of the board of directors of ACA consented to the Supervision Order.

8. By filing a verified petition on September 8, 2008, the Commissioner sought to reopen the rehabilitation proceeding as a result of an impairment of the surplus required under the Supervision Order. At a telephonic meeting held on September 4, 2008, at least two-thirds (2/3) of the board of directors of ACA voted to consent to the reopening of the rehabilitation. An order granting the petition and appointing the Commissioner as Rehabilitator was issued by this Court on September 8, 2008 (the "Rehabilitation Order"), and Peter A. Bengelsdorf was once

again appointed by the Commissioner and approved by this Court to act as Special Deputy Commissioner for the purpose of rehabilitation.

#### **I. Significant Actions Taken During the Reopened Rehabilitation Proceeding**

9. Pursuant to RSA 418:18 IV, the board of directors of ACA has the authority to assess policies in the event of any impairment to ACA's reserves. The board of directors of ACA, in consultation with the Insurance Department, made a determination that ACA's reserves were impaired and voted at telephonic meetings held on September 4, 2008, September 7, 2008 and September 18, 2008 to authorize a permanent assessment of up to twenty-five percent (25%) of the face amount of each certificate on all outstanding ACA insurance policies issued in the United States and Canada (which, as to the pre-need life insurance policies, replaced the Initial Assessment). In these resolutions, the board of directors of ACA delegated to the Commissioner the authority to implement these interim assessments, including to determine the amounts and timing of any assessment or assessments to be applied to one or more lines of ACA's business provided that the total assessment on any policy did not exceed twenty-five percent (25%) of the face value of any certificate.

10. Pursuant to the authority granted by the Rehabilitation Order and the authority delegated by the board of directors of ACA, the Commissioner by order effective as of September 8, 2008, imposed a twenty-five percent (25%) assessment on all in-force ACA policies (which, as to the pre-need insurance policies, replaced the twelve percent (12%) Initial Assessment), with the exception of: (i) U.S. annuities that were tax-qualified annuities; (ii) certain Canadian annuities that were more in the nature of investment contracts; and (iii) certain Canadian life, accident and disability policies that were so heavily reinsured that the benefit of the assessment would almost exclusively have been conferred upon reinsurers. ACA policies

that had terminated, expired, been surrendered or lapsed or which had been assumed by another carrier prior to September 8, 2008 were not subject to assessment. The aggregate amount of these assessments was approximately fifteen million dollars (\$15,000,000). By order dated September 9, 2008, the Commissioner also imposed a moratorium on loans and surrenders of in-force ACA policies for an indefinite period of time, pursuant to the Rehabilitation Order and RSA 402-C:17, II and V.

11. The goals of the Commissioner, as Rehabilitator, were as follows: (i) to place the remaining U.S. and Canadian policyholders of ACA with financially stronger, more stable insurance companies; (ii) to repatriate to the United States a significant amount of excess assets of the Company that were being held in Canada so that U.S. policyholders of ACA could be treated substantially the same as Canadian policyholders; (iii) to reduce dramatically the continuing operating expenses of the Company; and (iv) to liquidate the remaining illiquid assets of ACA.

12. On April 15, 2009, the Commissioner filed with this Court a Motion for Approval of a Plan of Reorganization (the “Plan”) and certain Assumption Reinsurance Agreements, in accordance with RSA 402-C:17, V, which was approved by order of this Court on May 11, 2009 (the “Plan Order”).

13. On November 24, 2010, the Commissioner filed with this Court his Fourth Report of the Rehabilitator, in accordance with the Plan, which included a request for approval to terminate ACA’s qualified, defined benefit retirement plan in the United States (the “Pension Plan”). The request to terminate the Pension Plan was approved by order of this Court on December 3, 2010 (the “Termination Order”).

14. On April 13, 2011, the Commissioner filed with this Court an Assented to Petition for Expedited Approval, requesting, in accordance with the Plan: (i) approval of an Assumption Reinsurance Agreement with the Supreme Council of the Royal Arcanum ("Royal Arcanum") regarding the assumption of ACA's pre-need life insurance policies (the "Pre-Need Assumption Agreement"); (ii) approval of an additional assessment of fifteen percent (15%) on ACA's pre-need life insurance policies (bringing the total assessment on those policies to forty percent (40%) or approximately an additional three million four hundred thousand dollars (\$3,400,000)); and (iii) temporarily lifting the moratorium on surrenders of pre-need life insurance policies in accordance with the Assumption Agreement. This petition was approved by this Court on April 20, 2011 (the "Pre-Need Order").

15. Acting pursuant to the Rehabilitation Order, the Plan Order, the Termination Order and the Pre-Need Order, the Commissioner took all reasonable actions available to preserve the assets of ACA and reorganize it including: (i) the transfer to and assumption by Royal Arcanum of all ACA U.S. life insurance and annuity policies, except pre-need life insurance policies and a very limited number of life insurance policies issued to ACA retirees and members of the board of directors, subject to the permanent twenty-five percent (25%) assessment (the "First RA Assumption Agreement"); (ii) in a later transaction, the transfer to and assumption by Royal Arcanum of all ACA pre-need life insurance policies, representing all remaining ACA policies in the United States (again, except for a limited number of life insurance policies issued to ACA retirees and members of the board of directors), subject to a forty percent (40%) assessment pursuant to the Pre-Need Assumption Agreement (the "Second RA Assumption Agreement"); (iii) the transfer to and assumption by Union Vie of the remaining policies issued by ACA's Canadian branch, subject to the permanent twenty-five percent (25%)

assessment (the ACA policies assumed by Royal Arcanum and Union Vie are collectively referred to as the "Assumed Policies"); (iv) dramatic reductions in U.S. and Canadian operating expenses through the termination of all employees and the retention of limited, contracted staff only, the transfer to Royal Arcanum of the expense of maintaining computer systems as well as lease expenses in Manchester, New Hampshire, and the closure of ACA's Canadian Branch; (v) the resolution of all outstanding tax filings and liabilities owed to the Canadian federal and provincial governments and the repatriation to ACA of very significant assets held by Canadian regulators; (vi) the resolution of certain supplemental pension obligations to ACA's former Canadian employees required by applicable Quebec provincial law; (vii) the termination of the Pension Plan on a fully funded basis; and (viii) the liquidation of certain mortgage loans previously issued and held by ACA.

16. With respect to each of the assumption reinsurance agreements between the Commissioner and Union Vie and Royal Arcanum described in paragraph 15 above, the assuming insurers agreed to:

- (a) be bound by all of the express written terms and conditions of the Assumed Policies, subject only to the terms and conditions of the respective assumption agreements; and
- (b) perform all of ACA's duties and obligations under the Assumed Policies to the same extent as though the assuming insurer had originally issued the Assumed Policies in the place of ACA, subject only to the terms and conditions of such assumption agreements.

Upon the transfer of the Assumed Policies to Royal Arcanum and Union Vie, each Assumed Policy effectively became a certificate or insurance policy of Royal Arcanum or Union Vie, respectively, and the Assumed Policies ceased to be policies of ACA. Royal Arcanum and Union Vie have, since the dates of assumption, administered the Assumed Policies, collected all premiums and paid all claims. As a result of the assumption transactions and the transactions

that took place during the initial rehabilitation and the period of Supervision, ACA has no remaining in-force policies, except for the limited number of policies still held by ACA retirees and members of the board of directors that were not assumed by Royal Arcanum or Union Vie.

17. Because ACA Assumed Policies were assumed by Royal Arcanum and Union Vie, and are thus no longer ACA policies, such policies are not subject to the continuation provisions of RSA 402-C:22 but shall continue in force in accordance with their terms, notwithstanding the initiation of this liquidation proceeding. The limited number of policies held by ACA retirees and members of the board of directors will be discontinued as a consequence of the requirements of RSA 402-C:22, I which provides that:

“I. All insurance policies issued by the insurer shall continue in force:

- (a) For a period of 30 days from the date of entry of the liquidation order;
- (b) Until the normal expiration of the policy coverage;
- (c) Until the insured has replaced the insurance coverage with equivalent coverage in another insurer; or
- (d) Until the liquidator has effected a transfer of the policy obligation pursuant to RSA 402-C:25, VIII; **whichever time is less.**” (emphasis supplied)

The Commissioner intends that such policies will be terminated effective as of the thirty-first (31<sup>st</sup>) day after the date of this Court’s order of liquidation.

18. On October 26, 2011, the Commissioner filed his Fifth Report of the Rehabilitation with the Court, which updated the Court on several developments in the Rehabilitation, including that notice of the Second RA Assumption Agreement, including the additional fifteen percent (15%) assessment and the lifting of the moratorium on policy surrenders, had been mailed to each ACA pre-need life insurance policyholder on April 22,



2011. The Fifth Report to the Court also provided notice to the Court of: (i) the closing of the Second RA Assumption Agreement, which represented the transfer of the Company's last remaining insurance policy obligations (again, except for the policies held by ACA retirees and directors) and ACA's largest remaining liability; (ii) the transfer of a first and second mortgage on residential property in Bennington, New Hampshire as part of the Second RA Assumption Agreement transaction, which represented the liquidation of the Company's last illiquid asset; (iii) the closure of the Company's Canadian Branch and surrender of its provincial licenses, repatriation of the remaining assets held by the Canadian regulator, resolution of all tax obligations and receipt of a tax refund from the Quebec provincial taxing authority; (iv) the resolution of the Company's Quebec provincial pension obligations; and (v) the Rehabilitator's plans to effectuate termination of the Company's Pension Plan on a fully funded basis, including obtaining a final determination letter from the Internal Revenue Service ("IRS"). The Commissioner also stated in the Fifth Report his desire that policyholders be given priority in any future liquidation on their assessment claims over general creditors, and that the greater assessment on pre-need life insurance policyholders be paid first as among these policyholder claims.

19. On August 15, 2012, the Commissioner filed his Sixth Report of the Rehabilitation with the Court, which updated the Court on several developments in the Rehabilitation, including the following: (i) the receipt of an inquiry from a potential general creditor with respect to a lease for space in Manchester, New Hampshire to which the Company was previously a party; (ii) the receipt of a refund of sixty-two thousand dollars (\$62,000) of Quebec provincial goods and services taxes; (iii) the expectation of an additional twenty-five thousand dollars (\$25,000) tax refund from Quebec; (iv) the investigation of the impact of the

liquidation proceeding on the Company's federal tax status; and (v) the receipt of the final IRS determination letter regarding the Pension Plan, the receipt of participant elections as to an annuity or lump sum, the purchase of a group annuity contract and the expectation that payouts and final closure of the Pension Plan will be completed by the end of September, 2012. The Commissioner further stated that a liquidation petition was likely to be filed in the near future and repeated his desire that prior policyholders of ACA whose policies had been assessed would be given priority in the liquidation on their assessment claims over general creditors, and that the more heavily assessed pre-need life insurance policies would be paid first among policyholders (seeking to reduce the 40% assessment on the pre-need life insurance policies). The Commissioner also outlined his intent to propose a streamlined proof of claim process for the liquidation that would not require submission of proofs of claim by former policyholders as to their assessment claims. The Sixth Report was the last report submitted by the Commissioner prior to this Petition.

## **II. Basis and Request for Liquidation Order**

20. At this time, the Commissioner states that the continued operation of ACA's business would be hazardous financially to the interests of ACA's assessed former policyholders, its creditors and to the public and would ultimately result in ACA becoming insolvent. Furthermore, the transformation of the Rehabilitation Order to a liquidation order pursuant to RSA 402-C:19 is appropriate at this time for the following reasons:

- (a) Failure to transform the Rehabilitation Order to a liquidation order will substantially increase the risk of loss to assessed former policyholders, creditors and the public as a result of the limited assets remaining, and the likelihood that the administrative costs of additional efforts to rehabilitate ACA will further deplete these limited assets.

Attached as Exhibit A is a statement of the cashflows of ACA for the entire period of the re-opened rehabilitation from September 8, 2008 through August 31, 2012, which reflects that five hundred five thousand dollars (\$505,000) of cash remains on hand as assets;

(b) Further attempts to rehabilitate ACA would be futile. With the transfer of almost all of ACA's U.S. and Canadian policies to other insurers, the repatriation of all funds held in Canada, the elimination of ACA's full-time staff and other actions to reduce or eliminate ACA's liabilities, ACA has effectively ceased operations as an insurer and an employer. ACA has also completed the liquidation of all illiquid assets. At this time it is clear that the value of assessments imposed upon ACA's life insurance policies and annuities of approximately eighteen million four hundred thousand dollars (\$18,400,000) will significantly exceed ACA's limited remaining assets. Accordingly, there is no scenario under which an order to terminate the rehabilitation would be feasible;

(c) But for the imposition of the assessments on ACA policies prior to their assumption by assuming insurance carriers, which reduced the required reserves associated with the Assumed Policies by approximately eighteen million four hundred thousand dollars (\$18,400,000) million in the aggregate, ACA would be insolvent at this time. However, the Commissioner is **not** seeking a declaration from the Court that ACA is insolvent; and

(d) The Board of Directors of ACA has been notified of the Commissioner's intentions and has expressed no objection to the filing of this petition. Outside legal counsel to ACA has, accordingly, assented to this petition.

21. The Commissioner further states that there exists a present necessity for the entry of an order of liquidation pursuant to RSA 402-C:19 and RSA 402-C:21 and requests that this Court appoint the Commissioner as Liquidator of ACA.

22. The Commissioner further states that pursuant to RSA 402-C:25, I, the Liquidator is empowered to employ a Special Deputy Liquidator to act for him in all matters concerning the liquidation of ACA. The Special Deputy Liquidator is to have all of the powers and immunities of the Liquidator under RSA 402-C, and all of the powers, immunities and protections set forth in the Liquidation Order. The Special Deputy Liquidator shall serve at the pleasure of the Liquidator.

23. The Rehabilitator has selected Peter A. Bengelsdorf c/o The Home Insurance Company in Liquidation, 61 Broadway, 6<sup>th</sup> Floor, New York, New York 10006 to serve as Special Deputy Liquidator. Mr. Bengelsdorf is well qualified to serve in this capacity because he served as the Special Deputy Commissioner with respect to the initial rehabilitation of ACA from October 12, 2006 through July 2, 2007 and the current rehabilitation from September 8, 2008 to the present time, as well as having served as ACA's Insurance Department Representative for the period of the Supervision from July 2, 2007 to September 7, 2008. In addition, Mr. Bengelsdorf has many years of experience in the insurance business, and he was appointed by the New Hampshire Insurance Department to serve as Special Deputy Rehabilitator and, thereafter, Special Deputy Liquidator for the New Hampshire Insurance Department for purposes of the rehabilitation and subsequent liquidation of The Home Insurance Company, US

International Reinsurance Company and Patriot Health Insurance Company, Inc. Mr.

Bengelsdorf continues to serve as Special Deputy Liquidator of The Home Insurance Company, US International Reinsurance Company and Patriot Health Insurance Company, Inc.

24. The Liquidator may determine the compensation of the Special Deputy Liquidator, along with certain other terms and conditions of his engagement. These terms are set forth in the attached contract (Exhibit B). The terms and conditions of Mr. Bengelsdorf's proposed engagement as Special Deputy Liquidator of ACA are substantially the same as those under which he has served as Special Deputy Commissioner for purposes of the rehabilitation of ACA and for the rehabilitation and subsequent liquidation of The Home Insurance Company and Patriot Health Insurance Company, Inc., which terms and conditions have, in each case, been approved by this Court; however, for purposes of this liquidation, Mr. Bengelsdorf has proposed to limit his compensation in the first year of the liquidation to a nominal amount in order to conserve the limited remaining assets of ACA. The effective date of the contract to retain Peter A. Bengelsdorf's services as Special Deputy Liquidator is proposed to be the date of the Court's order granting liquidation of ACA. Mr. Bengelsdorf's resume is attached as Exhibit C.

25. It is intended that the Special Deputy Liquidator be a state official for purposes of RSA 99-D:2, RSA 541-B:19 and RSA 400-A:37 IX, and thus be entitled to the protections and immunities of those laws, which protections shall continue beyond the termination of the contract attached as Exhibit B.

### **III. Proposed Notice and Proof of Claim Process**

26. In an effort to keep costs of administration as low as possible, the Commissioner is proposing a streamlined notification and proof of claims process that would minimize the need for mailings to potential creditors.

27. The Commissioner proposes to recognize as valid claims the full amount of all assessments imposed on the Company's Assumed Policies without requiring policyholders of Assumed Policies to file proofs of claim in that regard. This proposal is consistent with RSA 402-C:26, II and RSA 402-C:37, I, which provide that the liquidator need not require the submission of claims for "cash surrender values or other investment values in life insurance and annuities." The assessments imposed upon the Assumed Policies effectively impair the cash surrender values or investment values of the Assumed Policies. In addition, the assessments are the only remaining policy related obligations of ACA (other than approximately thirty-two (32) life insurance policies in the amount of \$3,000 each and having no cash or surrender value issued to ACA retirees and seven (7) membership life insurance policies in the amount of \$1,000 each and having no cash or surrender value issued to members of the board of directors) since the Assumed Policies themselves have already been assumed by solvent insurance carriers during the pendency of the rehabilitation and all other insurance policies issued by ACA have expired, lapsed, been surrendered or otherwise terminated.

28. Since the policyholder claims for the assessments on the Assumed Policies would be deemed to be asserted and valid claims in the liquidation proceeding without any further action by former ACA policyholders, and since almost all of ACA's insurance policies have all been assumed by one or more solvent insurance carriers, the Commissioner proposes to send notice of the liquidation to the assuming insurers of the ACA Assumed Policies pursuant to RSA 402-C:26, I(a), and not to the approximately twenty-three thousand six hundred (23,600) insureds who were formerly ACA policyholders. The notices sent to the assuming insurers would explicitly state that policyholders are not required to submit a proof of claim for their

assessment claims against ACA. This would result in substantial savings to the estate on the mailing costs without any detriment to the rights of the former policyholders.

29. In addition to providing notice of the liquidation order and the claim filing deadline to the assuming insurers of ACA's Assumed Policies, notice will also be given: (i) to TMA with respect to the Company's former travel insurance business; (ii) to approximately thirty-two (32) of ACA's retirees and seven (7) members of its board of directors who retain an ACA insurance policy interest that was not assumed, but were subject to the twenty-five percent (25%) assessment imposed effective as of September 8, 2008; and (iii) to all other persons known or reasonably expected to have claims against ACA in accordance with RSA 402-C:26. Proposed forms of the notice of the liquidation order and final claims filing deadline/bar date and the proof of claim, to be provided by the Liquidator pursuant to RSA 402-C:26, are submitted herewith as Exhibit D (proposed form of notice ) and Exhibit E (proposed proof of claim form). The Commissioner proposes to require that proofs of claim be filed with the Liquidator by the claims filing deadline and bar date for all claims other than for assessments, and would advise such claimants of the need to file a proof of claim in the notice. The Commissioner further proposes that any new proofs of claim that are postmarked after the filing deadline/bar date would be considered unexcused late filed pursuant to RSA 402-C:37, III. and would not be considered as they would prejudice the orderly administration of the liquidation. It is anticipated that policyholder claims for assessments that have been imposed will represent the vast majority of the claims in the liquidation proceeding.

30. Although the Commissioner will give notice to independent insurance agents of ACA as potential creditors, he does not propose to give notice to such agents for the purpose of requiring them to give notice to policyholders pursuant to RSA 402-C:27. The principal purpose

of notice to insurance agents under that statute is to provide prompt notice to policyholders with in-force policies (that is, whose policies have not lapsed, terminated or been surrendered or whose policy periods have not expired) of the liquidation and the prospective impairment of their policies, so they can seek to replace the policies. In this case, the Assumed Policies have not been impaired prospectively (except by the amount of the assessment which shall be treated as a submitted claim without the need for a proof of claim to be submitted) because the policies have been assumed by the assuming insurers. The thirty-two (32) policies issued to ACA retirees and the seven (7) policies issued to ACA members of board of directors were not issued through agents and these policyholders will receive direct notice. In these circumstances, notice to insurance agents concerning any obligations under RSA 402-C:27 should not be required.

31. The Commissioner proposes a claims filing deadline/bar date, for the filing of all proofs of claim that are not automatically deemed filed, of six (6) months from the date of the entry of the liquidation order in accordance with RSA 402-C:26, II.

#### **IV. Proposed Classification of, and Distributions to, Former Policyholders**

32. RSA 402-C:44 provides for the order of distribution of claims in a liquidation proceeding. After administration costs, the highest priority is given to policy related claims. Specifically, this section assigns priority Class II to “[a]ll claims by policyholders . . . beneficiaries, and insureds arising from and within the coverage and not in excess of the applicable limits of insurance policies and insurance contracts issued by the company . . . .” RSA 402-C:44, II. This section further provides that “[a]ll claims under life insurance and annuity policies, whether for death proceeds, annuity proceeds or investment values, shall be treated as loss claims.” *Id.*



33. With this Court's approval, the Commissioner intends to treat claims of former ACA policyholders related to the cumulative assessments on ACA's policies as Class II policyholder claims. This classification would place these claims above the claims of general creditors, which are given Class V priority.

34. With respect to the Class II policyholder claims, and with the Court's approval, the Commissioner intends to pay such claims as follows: claims will be approved, and funds will be paid, in an amount necessary to reduce the assessment on the pre-need life insurance policies, which are subject to the forty percent (40%) cumulative assessment. It is anticipated that there will not be sufficient funds to reduce the cumulative pre-need assessment to a level that is even close to twenty-five percent (25%), and thus, there will be no remaining funds available to reduce the assessment on either the pre-need policies or the other Assumed Policies below twenty-five percent (25%).

35. The Commissioner believes that this proposed classification is consistent with RSA Chapter 402-C, the Commissioner's responsibilities as Liquidator and ACA's obligations under the First RA Assumption Agreement and the Second RA Assumption Agreement, which were approved by this Court in the Plan Order and Pre-Need Order.

#### **V. Proposed Order**

36. A proposed Order Appointing Liquidator is filed herewith and is consistent with the authority set forth in RSA 402-C. The Commissioner requests that this Court enter the proposed Order Appointing Liquidator.

37. ACA has assented to the Commissioner's Petition and requests for Orders. Accordingly, the Commissioner and ACA join in the request that the Court grant the following Orders immediately and without hearing.

WHEREFORE, the Commissioner, pursuant to the provisions of RSA 402-C:19 and RSA 402-C:21, and with the assent of ACA, prays for the following relief:

A. A finding that sufficient cause exists for the liquidation of ACA, termination of the rehabilitation of ACA and appointment of the Commissioner as Liquidator;

B. Entry of an Order of Liquidation appointing Roger A. Sevigny, Commissioner of Insurance for the State of New Hampshire, and his successors in office, as Liquidator of ACA, without notice and hearing;

C. Entry of an Order authorizing the Liquidator, in his discretion, to pay expenses incurred in the course of the rehabilitation and liquidation of ACA, including the actual, reasonable and necessary costs of preserving or recovering the assets of ACA, wherever located, and the costs of goods and services provided to the ACA estate in this and other jurisdictions. Such costs shall include, but not be limited to: (1) reasonable professional fees for accountants, actuaries, attorneys and consultants with other expertise retained by the New Hampshire Department of Insurance, the Commissioner, or the Liquidator to perform services relating to the liquidation of ACA; (2) compensation and other costs related to representatives, employees or agents of ACA who perform services for ACA in liquidation; and (3) the costs and expenses of, and a reasonable allocation of costs and expenses associated with, time spent by New Hampshire Insurance Department personnel and New Hampshire Department of Justice personnel in connection with the rehabilitation and liquidation of ACA;

D. Entry of an Order directing that the Liquidator may employ or continue to employ, to delegate authority to and fix the compensation of such appropriate personnel, including accountants, actuaries, consultants, special counsel and counsel in this and other

jurisdictions as he deems necessary to carry out the liquidation of ACA, subject to compliance with the provisions of RSA 402-C, the supervision of the Liquidator, and of this Court.

E. Entry of an Order stating that the actual, reasonable and necessary costs of preserving, recovering, distributing or otherwise dealing with the assets of ACA, wherever located, and costs of goods or services provided to the ACA estate during the Rehabilitation and Liquidation proceedings, will be treated as “costs and expenses of administration” pursuant to RSA 402-C:44, I;

F. Entry of an Order appointing Peter A. Bengelsdorf as Special Deputy Liquidator for the Liquidator of ACA pursuant to RSA 402-C: 25,I, approving the Consulting Agreement set forth in Exhibit B, and confirming that the Special Deputy Liquidator shall be a state official for purposes of RSA 99-D:2, RSA 541-B:19 and RSA 400-A:37 IX, and thus be entitled to the protections and immunities of those laws, which protections shall continue beyond the termination of the contract attached as Exhibit B;

G. Entry of an Order directing the Liquidator to take possession of the assets of ACA and administer them under the orders of the Court and granting title to all of the assets, property, contracts, rights of action and all of the books, records, accounts and other documents of ACA wherever located and by whomever possessed;

H. Entry of an Order that the Liquidator is authorized to transfer, invest, re-invest and otherwise deal with the assets and the property of ACA so as to effectuate its liquidation;

I. Entry of an Order that the Liquidator is authorized to acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon or otherwise dispose of or deal with any property of the insurer at its market value or upon such terms and conditions as are fair and reasonable, without the prior permission of the Court in the ordinary course of business;

J. Entry of an Order that the Liquidator is authorized to enter into such contracts as are necessary to carry out the Order, and to affirm or disavow any contracts to which ACA is a party;

K. Entry of an Order that ACA and its directors, officers, employees, agents and representatives are prohibited from proceeding with the business of ACA, except upon the express written authorization of the Liquidator;

L. Entry of an Order prohibiting the officers, directors, agents, employees, and representatives of ACA, and any persons acting in concert with ACA, from disposing, using, transferring, removing or concealing any property of ACA, without the express written authority of the Liquidator.

M. Entry of an Order prohibiting any bank, savings and loan association or other financial institution or other legal entity from disposing of, allowing to be withdrawn or concealing in any manner any property or assets of ACA, except under the express, written authorization of the Liquidator or by the further order of this Court;

N. Entry of an Order directing all persons in custody or possession of any property of ACA to turn over any such property to the Liquidator;

O. Entry of an Order abating any legal action or proceeding of any kind, whether in this state or elsewhere, against ACA, except where the Liquidator, in his discretion, decides to intervene in any such action or proceeding;

P. Entry of an Order permanently enjoining and restraining all persons from bringing the following actions:

(1) commencing or continuing any judicial, administrative or other action or proceeding against ACA, the Rehabilitator or the Liquidator;

(2) commencing or continuing any judicial, administrative or other action or proceeding against ACA's, the Rehabilitator's or Liquidator's present or former directors, officers, employees, agents, representatives or consultants, arising from their actions on behalf of ACA;

(3) enforcing any judgment against ACA or its property;

(4) any act to obtain possession of property of ACA or to exercise control over property of ACA;

(5) any act to create, perfect or enforce any lien against property of ACA;

(6) any act to collect, assess or recover a claim against ACA, other than the filing of a proof of claim with the Liquidator; and

(7) the setoff of any debt owing to ACA; provided, however, that notwithstanding anything in this Order to the contrary, nothing herein is intended nor shall it be deemed to stay any right of setoff of mutual debts or mutual credits by reinsurers as provided in, and in accordance with, RSA 402-C:34.

Q. Entry of an Order permanently enjoining and restraining all persons doing business with ACA on the date of the Liquidation Order from terminating or attempting to terminate such relationship for cause under contractual provisions on the basis of the rehabilitation or liquidation;

R. Entry of an Order providing that amounts recoverable by the Liquidator from any reinsurer of ACA shall not be reduced as a result of the prior rehabilitation proceeding or this liquidation proceeding or by reason of any partial payment or distribution in a reinsured policy, contract, or claim and that each reinsurer of ACA is enjoined and restrained from terminating, canceling, failing to extend or renew or reducing or changing coverage under any reinsurance

policy or contract with ACA without first obtaining leave of this Court. The Liquidator may, in his discretion, commute any contract with a reinsurer or reinsurers;

S. Entry of an Order that the Assumed Policies ceased to be policies of ACA upon the date of their assumption by Royal Arcanum and Union Vie, and that these Assumed Policies are therefore not policies of ACA for purposes of the liquidation proceeding and are not subject to the continuation provisions of RSA 402-C:22.

T. Entry of an Order that the life insurance policies held by ACA retirees and members of the board of directors shall be discontinued and terminated in accordance with RSA 402-C:22 as of the thirty-first (31st) day after the date of entry of the Order of Liquidation.

U. Entry of an Order approving the proposed claim procedures, including the Liquidator's acceptance of the full amount of all assessments imposed on the Company's Assumed Policies as valid claims in the estate, without requiring policyholders of Assumed Policies to file proofs of claim to that effect with the Liquidator.

V. Entry of an Order approving the attached proposed notice and proof of claim form to be sent to potential creditors pursuant to RSA 402-C:26, including to the assuming insurance carriers of the Assumed Policies, rather than to each holder of the Assumed Policies individually, and directing that notice need not be provided to such former policyholders or to independent insurance agents of ACA directing the agents to give notice to policyholders;

W. Entry of an Order providing that proofs of claim postmarked after the final deadline and bar date would be considered unexcused late filed pursuant to RSA 402-C:37 III. and would not be considered as they would prejudice the orderly administration of the liquidation and that the final deadline and bar date for filing claims with the Liquidator pursuant

to RSA 402-C:26, II, RSA 402-C:37, I, and RSA 402-C:40, II shall be six (6) months from the date of the Order.

X. Entry of an Order directing that the Liquidator administer and make payments on all claims against the ACA estate filed with the Liquidator in accordance with New Hampshire's priority statute, RSA 402-C:44;

Y. An Order directing that, within one (1) year of the entry of this Order, and then annually thereafter, the Liquidator shall file with the Court a financial report as of the preceding December 31, in accordance with RSA 402-C:21, V, which shall include, at a minimum, the assets and liabilities of ACA and all funds received or disbursed by the Liquidator during the period;

Z. Entry of an Order that the Liquidator shall have the full powers and authority given to a liquidator under RSA 402-C, and under provisions of all other applicable laws, as are reasonable and necessary to fulfill the duties and responsibilities of the Liquidator under RSA 402-C, and under the Order, specifically including, but not limited to, each and every power and authority bestowed upon the Liquidator under RSA 402-C:25, the provisions of which are incorporated by reference in their entirety into the Order, and the common law of New Hampshire;

AA. An Order directing that the rehabilitation proceedings initiated under RSA 402-C:15 for ACA are hereby terminated pursuant to RSA 402-C:19; and

BB. Entry of an Order including such further and other relief as this Court may deem just and proper under the circumstances.

Respectfully submitted,


NH INSURANCE DEPARTMENT  
ROGER A. SEVIGNY, COMMISSIONER

By His Attorneys,

MICHAEL A. DELANEY  
ATTORNEY GENERAL

Dated: September 25, 2012

By:

  
J. Christopher Marshall, NH Bar #1619  
Assistant Attorney General  
Civil Bureau  
33 Capitol Street  
Concord, New Hampshire 03301-6397

Of Counsel:  
Steven J. Lauwers  
Rath, Young & Pignatelli, P.C.  
One Capital Plaza  
Concord, NH 03302-1500  
(603) 226-2600  
NH Bar # 13079

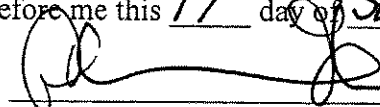
STATE OF NEW HAMPSHIRE  
MERRIMACK COUNTY SS

**CERTIFICATE OF VERIFICATION**

Roger A. Sevigny, being first duly cautioned and sworn according to law, says that he is the duly appointed and qualified Commissioner of Insurance of the State of New Hampshire and Plaintiff in this matter and that the facts and all allegations made in the Petition are all true as he verily believes.

  
\_\_\_\_\_  
Roger A. Sevigny

Sworn to and subscribed to before me this 17<sup>th</sup> day of SEPTEMBER 2012.

  
\_\_\_\_\_  
Notary Public/~~Justice of the Peace~~

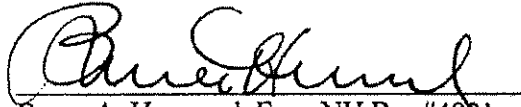
Chiara Dolcino  
My Commission Expires

10/6/15



ASSENT OF ACA ASSURANCE

The Board of Directors of ACA Assurance assents to the entry of the Orders granting the relief requested in this Petition, in the form submitted with this Petition.

A handwritten signature in cursive script, appearing to read "Bruce A. Harwood", written over a horizontal line.

Bruce A. Harwood, Esq., NH Bar #4821

ACA ASSURANCE

By Its Attorneys,

SHEEHAN PHINNEY BASS + GREEN

PROFESSIONAL ASSOCIATION

1000 Elm Street, P.O. Box 3701

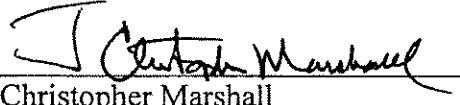
Manchester, NH 03105-3701

(603) 627-8139

Dated: Sept. 27, 2012

## CERTIFICATE OF SERVICE

I, J. Christopher Marshall, hereby certify that on this 28<sup>th</sup> day of September 2012 a true and correct copy of the foregoing document was sent via first class mail, postage paid to all parties on the Service List.

  
J. Christopher Marshall

## **EXHIBIT A**

### **Statement of Cash Flow for the Second Rehabilitation of ACA Assurance (in millions)**

<b>Opening Cash and marketable securities- August 31, 2008</b>	<b>52.3</b>
<b>Outflows:</b>	
Royal Arcanum Assumption other than pre-need	22.3
Royal Arcanum Assumption-pre-need	13.6
Union Vie Assumption	6.4
Pension costs	2.2
Policy benefits paid	8.4
<b>Total Outflows</b>	<b>52.9</b>
<b>Net Inflows:</b>	
Trois Rivières property sale	0.5
Collective net of inflows from investment income, sale of assets, policy premiums and other income less G&A expenses*	0.6
<b>Total Net Inflows</b>	<b>1.1</b>
<b>Outflows in excess of Net Inflows</b>	<b>51.8</b>
<b>Closing cash-August 31, 2012</b>	<b>0.5</b>

\* Entry reflects all other activities not specified in lines 7-11 and 14 that were conducted during the Rehabilitation that commenced September 8, 2008.

## **Exhibit B**

### **CONSULTING AGREEMENT**

**THIS CONSULTING AGREEMENT** (the "Agreement"), is made as of this \_\_\_\_ day of \_\_\_\_\_ 2012, by and between Roger A. Sevigny, Commissioner, State of New Hampshire Insurance Department ("Department"), having its principal place of business at 21 South Fruit Street, Suite 14, Concord, New Hampshire 03301, (the "Liquidator") and Peter Bengelsdorf (the "Consultant" or "Special Deputy Liquidator").

**WHEREAS**, the Commissioner has been appointed Liquidator of ACA Assurance ("ACA") by an Order of Liquidation entered by the Merrimack County Superior Court (the "Court") on \_\_\_\_\_, 2012 (Docket No. 06-E-380); and

**WHEREAS**, pursuant to applicable provisions of the New Hampshire Insurance Code and the Order of Liquidation, the Liquidator is vested with the authority and responsibility to protect the interests of policyholders and creditors of ACA and may appoint a Special Deputy Liquidator; and

**WHEREAS**, the Liquidator desires to secure the services of a Special Deputy Liquidator and the Consultant desires to perform such services for the Liquidator on the terms and conditions set forth in this Agreement; and

**WHEREAS**, it is understood and agreed that the Consultant will be appointed as the Special Deputy Liquidator for ACA and that all actions, reports, opinions, advice (written and oral) rendered pursuant hereto will be used only by the Department for its guidance in fulfilling its responsibilities under New Hampshire Law; and

**WHEREAS**, it is understood and agreed that the Special Deputy Liquidator, subject to the approval of the Liquidator, shall have the powers of the Liquidator under RSA 402-C:25 and the Order of Liquidation to conduct the liquidation of ACA.

**NOW, THEREFORE**, in consideration of the foregoing and of the respective covenants and agreements of the parties herein contained, the parties hereto agree as follows:

1. **SERVICES:** The Special Deputy Liquidator shall provide the Liquidator such services as are reasonably necessary for the Liquidator to effect the liquidation of ACA pursuant to the provisions of the New Hampshire Insurance Code and the Order of Liquidation.

2. **TERM AND TERMINATION:** This Agreement shall, subject to approval by the Court, be effective as of the date first written above and shall be terminated as of the earlier of:

- (a) The mutual written agreement of the parties hereto to terminate the Agreement;
- (b) The giving by either party at any time of notice of termination of this Agreement upon thirty (30) days' written notice to the other party.

Upon the termination of the Agreement for any reason, the Special Deputy Liquidator shall cease providing Services to the Liquidator and shall immediately surrender and deliver to the Liquidator any and all reports, working papers and documents of every kind prepared by or for the Special Deputy Liquidator relating to ACA and/or the services provided hereunder including, but not limited to, any works in progress following the termination of this Agreement.

3. COMPENSATION & EXPENSES: Provided that the Special Deputy Liquidator shall satisfactorily perform his obligations hereunder on behalf of the Liquidator, ACA shall pay the Consultant an hourly fee of \$250, provided that the Consultant's compensation shall not exceed ONE DOLLAR (\$1.00) during the first twelve (12) months of this Agreement. The Consultant shall also be reimbursed for his reasonable and necessary travel expenses incurred by the Consultant including, without limitation, necessary round trip coach airfare for the Consultant to and from his residence and hotel or apartment accommodations in connection with such travel. Such hourly fee of \$250 shall include time that the Consultant spends traveling between his current residence and New Hampshire or any other location deemed necessary. The Consultant shall be compensated at such hourly fee for any testimony required to be given relative to services provided hereunder. The compensation of the Special Deputy Liquidator and any other special deputies, assistants and clerks, and all expenses of taking and securing possession of the property and affairs of ACA and of conducting the liquidation of ACA shall be paid out of the funds or assets of ACA. The Consultant shall submit accurate and complete invoices to the Liquidator on a monthly basis against such advance deposit, or more frequently at the request of the Liquidator, specifying the day or days on which the Consultant provided services, the number of hours, or fraction thereof, spent providing the services, a reasonably detailed description of the tasks performed, and the expenses incurred thereon.

4. FACILITIES AND SERVICES TO BE PROVIDED TO THE CONSULTANT: On behalf of the Liquidator, ACA shall provide all necessary facilities and services to the Special Deputy Liquidator to provide the Services enumerated above.

5. RELATIONSHIPS OF PARTIES: The Special Deputy Liquidator's status under this Agreement and his performance of his duties and obligations hereunder shall be that of an independent contractor, and nothing contained in this

Agreement shall create or imply an employer/employee relationship between the Liquidator and the Special Deputy Liquidator. Nor shall this Agreement be deemed to constitute a joint venture or partnership between the parties. However, for purposes of New Hampshire RSA Chapter 402-C, the Special Deputy Liquidator shall enjoy and be vested with the same privileges, protections and immunities as the Liquidator, pursuant to the provisions of RSA 402-C and other applicable provisions of the New Hampshire statutes, and common law.

6. COVENANT: The Special Deputy Liquidator shall not, during the term of this Agreement, serve any interest or do any act or thing that may conflict with the interests of the Liquidator and his responsibility to the policyholders and creditors of ACA. If consistent with the foregoing Covenant and if it will not diminish the Consultant's availability and capacity to fully and timely fulfill the obligations under this Agreement, the Consultant may continue to serve current or new clients while performing consulting services for the Liquidator, and such retention and commitments shall not, in themselves, be deemed a breach of this Covenant. The Liquidator expressly agrees that the Consultant's service as a Special Deputy Liquidator of The Home, USI Reinsurance and Patriot Health Insurance Company, Inc. shall not be deemed a conflict with the interests of the Liquidator of ACA or its responsibilities to the policyholders and creditors of ACA.

7. CONFIDENTIALITY: The Special Deputy Liquidator shall receive and have access to information that is privileged and confidential. Both during and after the term of this Agreement, the Special Deputy Liquidator agrees to strictly preserve and protect the privileged and confidential nature of this information except as the Department shall authorize in writing addressed to the Special Deputy Liquidator. Privileged and confidential information shall include, but not be limited to any and all statements, models, projects, analyses, calculations and any and all materials in connection therewith concerning the financial condition or business or operations of ACA, but does not include any documents, records or information that have become publicly available other than by reason of the Special Deputy Liquidator's failure to comply with this Agreement.

The Special Deputy Liquidator hereby acknowledges that each term and condition contained in this paragraph 7 is necessary to preserve the confidentiality of the information furnished to the Special Deputy Liquidator and that the Special Deputy Liquidator's failure to comply with any such term or condition would result in irreparable damage to the Department and ACA in an amount that is impossible to quantify.

The Special Deputy Liquidator shall require any of his agents or employees who receive such information (collectively "Agents") to abide by the terms of this paragraph to the same extent that the Special Deputy Liquidator is required to do so.

At such time as the Liquidator requests, the Special Deputy Liquidator and his Agents shall return to the Department or its designated representatives or shall destroy all copies of the information in any form whatsoever (including any notes, reports, transmittal letters or other writings prepared by the Special Deputy Liquidator and his Agents). Upon the request of the Department any such destruction shall be certified in writing by the Special Deputy Liquidator.

Subject to the Court's order and RSA 400-A:25, I, all information obtained by the Liquidator or the Department from ACA, its affiliates, or its providers or other creditors, in the course of the liquidation, shall be considered examination workpapers and shall be given confidential treatment as provided in RSA 400-A:37, IV, (d).

8. INDEMNIFICATION: If any claim is made or any civil action is commenced against the Special Deputy Liquidator arising from such acts committed within the scope of his official duty, he shall be entitled, as a state officer or official, to defense and indemnification as set out in RSA 99-D and in accordance with the terms and conditions contained therein. The indemnification shall continue as to any claims made or threatened to be made against the Consultant arising out of circumstances prior to the date of termination of this Agreement, notwithstanding the fact that said claim(s) is not made or threatened until after such date.

9. NON-ASSIGNMENT: This Agreement is personal to the Consultant, and he may not assign or delegate any of his rights or obligations hereunder without first obtaining the written consent of the Liquidator.

10. NOTICES: All notices, requests, approvals and consents and other communications required or permitted under this Agreement shall be in writing and shall be sent to the facsimile number specified below or as may be notified from time-to-time by the party in question in writing. A copy of any such notice shall also be personally delivered or sent by (a) first class U.S. Mail, registered or certified, return receipt requested, postage pre-paid; or (b) U.S. Express Mail, Federal Express, or other similar overnight bonded mail delivery services, to the address set out below, or to such address as may be notified in writing from time-to-time by the party in question to the other party.

If to the Liquidator:

New Hampshire Insurance Department  
21 South Fruit Street, Suite 14  
Concord, New Hampshire 03301  
FAX: (603) 271-7851

If to the Special Deputy Liquidator:

Peter Bengelsdorf  
c/o The Home Insurance Company in Liquidation  
61 Broadway, 6<sup>th</sup> Floor, New York, New York 10006  
FAX: (603) 271-7851

11. COUNTERPARTS: This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one single agreement between the parties.

12. HEADINGS: The headings are for reference and convenience only and shall not be considered in the interpretation of this Agreement.

13. SEVERABILITY: If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, then the remaining provisions of this Agreement will remain in full force and effect.

14. WAIVER: No delay or omission by either party to exercise any right or power that any party has under this Agreement shall impair or be construed as a waiver of such right or power. A waiver by any party of any breach or covenant shall not be construed to be a waiver of any succeeding breach or any other covenant. All waivers must be in writing and signed by the party waiving its rights.

15. AMENDMENTS: No amendments to, or change, waiver or discharge of, any provision of this Agreement shall be valid unless in writing and signed by an authorized representative of the party against which such amendment, change, waiver or discharge is sought to be enforced.

16. GOVERNING LAW: This Agreement shall be interpreted in accordance with and governed by the laws of the State of New Hampshire, without giving effect to the principles of conflicts of laws.

17. VENUE: Any action or proceeding arising out of this Agreement may be brought against either party in the Merrimack County Superior Court of the State of New Hampshire, and each party consents to the jurisdiction of such courts in any such action or proceeding and waives any objection to venue laid therein.

18. ENTIRE AGREEMENT: This Agreement is the entire agreement between the parties with respect to its subject matter, and except as recited above there are no other representations, understandings or agreements between the parties relative to such subject matter.



IN WITNESS WHEREOF, each of the Department and the Consultant have caused this Agreement to be signed and delivered by its duly authorized representative.

---

Roger A. Sevigny, Commissioner of  
Insurance and Liquidator of ACA  
Assurance

---

Peter Bengelsdorf, Consultant

## **Exhibit C**

### **Professional History** **Peter Bengelsdorf**

#### **Employment:**

07/94-Present	Consultant to various companies including Ernst & Young, Various Insurance Commissioners, Transit Casualty Company In Receivership, Underwriters Reinsurance Company, Swiss Reinsurance Company, New York Stock Exchange Companies and others. Special Deputy Liquidator for both Home Insurance Company and USI Reinsurance Company. Special Deputy Commissioner ACA Assurance, Special Deputy Liquidator Patriot Health Insurance Company
06/82-06/94	Executive Vice President and Chief Financial Officer URC Holdings Corporation, Underwriters Reinsurance Company Woodland Hills, California
06/76-06/82	Vice President, Chief Financial Officer, and Underwriter California Re Management Corporation Pasadena, California
08/75-06/76	Accounting Manager Western Employers Insurance Fullerton, California
06/72-08/75	Accounting Supervisor Transamerica Insurance Company Los Angeles, California

#### **Special Activities:**

- \* College Teaching Credential in Banking and Finance
- \* Guest Lecturer for California Insurance Department, Insurance Education Association
- \* Past Director of California State University, Northridge Trust Fund and Chair of Investment Committee

#### **Education:**

1969-1970	California State University, Northridge, CA <ul style="list-style-type: none"><li>* <b>M.S.</b> degree in Business Administration with emphasis in Corporate Finance and Statistical Analysis</li><li>* Math minor</li></ul>
1964-1968	California State University, Northridge, CA <ul style="list-style-type: none"><li>* <b>B.S.</b> degree in Business Administration Quantitative Methods and Finance</li></ul>

## Exhibit D

### ACA Assurance in Liquidation

[DATE]

## **IMPORTANT NOTICE REGARDING ACA ASSURANCE IN LIQUIDATION**

Dear Vendors and Other Potential Claimants of ACA Assurance ("ACA"):

This notice contains important information about what those with claims against ACA need to do to protect their interests.

### **Background**

ACA was the subject of two rehabilitation proceedings, the first of which was initiated in the Merrimack County Superior Court (the "Court") by the New Hampshire Insurance Commissioner (the "Commissioner") on October 11, 2006. ACA's initial rehabilitation was terminated on July 2, 2007 pursuant to an order of the Court; however, ACA remained subject to an Order of Supervision (the "Supervision Order") dated July 2, 2007, between the Commissioner and ACA. By filing a verified petition on September 8, 2008, the Commissioner sought to reopen the rehabilitation proceeding as a result of the failure of ACA to meet the terms of the Supervision Order. An Order appointing the Commissioner as Rehabilitator was issued on September 8, 2008 (the "Rehabilitation Order").

Pursuant to the Rehabilitation Order and other orders of the Court authorizing him to do so, the Commissioner took all reasonable actions available to preserve the assets of ACA and reorganize it during the Rehabilitation, which included the transfer of essentially all of ACA's in force insurance policy obligations in the United States and Canada via assumption reinsurance agreements.

On \_\_\_\_\_, 2012, an Order of Liquidation was entered by the Court, placing ACA in liquidation.

### **Claims as to ACA Policies Assumed by Royal Arcanum or Union-Vie**

The Order of Liquidation does not affect policyholder insurance claims with respect to policies assumed by Supreme Council of the Royal Arcanum ("Royal Arcanum") or L'Union-Vie Compagnie Mutuelle D'Assurance ("Union-Vie"), collectively "Assumed Policies". Royal Arcanum and Union-Vie have committed to perform the terms of the Assumed Policies, subject to any applicable assessments that were imposed by ACA prior to such assumption.

### **Claims as to the Assessments on ACA policies imposed by ACA**

With respect to the assessments that have been imposed upon ACA policies by ACA, policyholders of Assumed Policies are deemed to have filed a proof of claim with the ACA liquidation estate for the full amount of all assessments imposed on such Assumed Policies, and no proof of claim needs to be filed. The Order of Liquidation also deems the assessment claims of policyholders whose policies were issued to them in their status as ACA directors or retirees as already filed.

### **Claims of ACA Directors or Retirees as Policyholders, Other than for Assessments**

Those ACA policyholders who held policies as a result of their status as current ACA directors or as retirees of ACA must, except for claims as to the assessment on such policies, file a proof of claim in order to preserve their claim. These claims would include death claims arising prior to the automatic discontinuation and termination of such policies, which shall occur on or before [date] by operation of RSA 402-C:22 I. (a) and the Order of Liquidation.

### **Claims of all General Creditors**

All general creditors (i.e., non-policyholders) **must** file a Proof of Claim in order to preserve their claim. These claims would include, for example, goods and services provided by vendors and trade creditors prior to September 8, 2008, the date ACA was placed into rehabilitation. Payment of these claims may be made in the future, but only in the event that sufficient assets are available to pay all higher priority claimants, including persons with policy related claims, in accordance with law.

A Proof of Claim form is attached to this notice. Proof of Claim forms can also be obtained at the following website [www.aca-assurance.org](http://www.aca-assurance.org). A copy of the notice and the Proof of Claim will also be posted on the website of the New Hampshire Insurance Department..

**The Court has set \_\_\_\_\_, 2013 as the final deadline and bar date for submitting all claims against ACA. Any new claims postmarked after this date will be considered unexcused late filed and will not be considered.**

### **Questions About the Proof of Claim Process**

If you have questions about the ACA proof of claim process, please call 1-800-347-0014. for assistance.

**Peter A. Bengelsdorf, Special Deputy Liquidator  
ACA Assurance in Liquidation**

## Exhibit E

### PROOF OF CLAIM ACA Assurance

Merrimack County Superior Court, State of New Hampshire 06-E-380

Read Carefully Before Completing This Form

Please print or type

FOR LIQUIDATOR'S USE ONLY

DATE PROOF OF  
CLAIM RECEIVED

DATE POSTMARKED

**The Final Deadline and Bar Date for Filing this Form is [\_\_\_\_\_] , 2013. Any Proof of Claim postmarked after this date will be considered unexcused late filed and will not be considered.**

You should file this Proof of Claim form if you have an actual or potential claim against ACA Assurance ("ACA") even if the amount of the claim is presently uncertain. To have your claim considered by the Liquidator, this Proof of Claim must be postmarked no later than [\_\_\_\_\_] , 2013. Failure to timely return this completed form will result in the **DENIAL OF YOUR CLAIM**. You are advised to retain a copy of this completed form for your records.

1. Claimant's Name: \_\_\_\_\_

2. Claimant's Address: \_\_\_\_\_  
\_\_\_\_\_

3. Claimant's Telephone Number: (\_\_\_\_\_) \_\_\_\_\_

Fax Number: (\_\_\_\_\_) \_\_\_\_\_

Email address: \_\_\_\_\_

*If your name, address, e-mail address, or telephone number set forth above are incorrect, or if they change, you must notify the Liquidator so he can advise you of new information.*

4. Claimant's Social Security Number, Tax ID Number or Employer ID Number: \_\_\_\_\_

5. Claim is submitted by (check one):

a) ☐ Policyholder or former policyholder (including claims of others by subrogation)

b) ☐ Employee or former employee

c) ☐ Broker or Agent

d) ☐ General Creditor

e) ☐ State or Local Government Entity

f) ☐ Other; describe: \_\_\_\_\_

Describe in detail the nature of your claim. You may attach a separate page if desired. **Attach relevant documentation** in support of your claim, such as copies of outstanding invoices, contracts, or other supporting documentation.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6. Indicate the total dollar amount of your claim. If the amount of your claim is unknown, write the word "unknown", BUT be sure to attach sufficient documentation to allow for determination of the claim amount. If the amount is known, this field **MUST** equal the amount entered in line #14.

\$(U.S.) \_\_\_\_\_ (if amount is unknown, write the word "unknown").

7. If you have any security backing up your claim, describe the nature and amount of such security. Attach relevant documentation.

\_\_\_\_\_  
\_\_\_\_\_

8. If ACA has made any payments toward the amount of the claim, describe the amount of such payments and the dates paid: \_\_\_\_\_

9. Is there any setoff, counterclaim, or other defense which should be deducted by ACA from your claim? \_\_\_\_\_

10. Do you claim a priority for your claim? If so, why: \_\_\_\_\_

11. Print the name, address and telephone number of the person who has completed this form.

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number (\_\_\_\_) \_\_\_\_\_

Email address \_\_\_\_\_

12. If represented by legal counsel, please supply the following information:

a. Name of attorney: \_\_\_\_\_

b. Name of law firm: \_\_\_\_\_

c. Address of law firm: \_\_\_\_\_

d. Attorney's telephone: (\_\_\_\_) \_\_\_\_\_

e. Attorney's fax number: (\_\_\_\_) \_\_\_\_\_

f. Attorney's email address: \_\_\_\_\_

13. If using a judgment against ACA as the basis for this claim:

a. Amount of judgment \_\_\_\_\_

b. Date of judgment \_\_\_\_\_

c. Name of case \_\_\_\_\_

d. Name and location of court \_\_\_\_\_

e. Court docket or index number (if any) \_\_\_\_\_

14. All claimants must complete the following:

I, \_\_\_\_\_ (insert individual claimant's name or name of person completing this form for a legal entity) subscribe and affirm as true, under the penalty of perjury as follows: that I have read the foregoing proof of claim and know the contents thereof, that this claim in the amount of \_\_\_\_\_ United States dollars (U.S. \$ \_\_\_\_\_) against ACA is justly owed, except as stated in item 9 above, and that the matters set forth in this Proof of Claim are true to the best of my knowledge and belief. I also certify that no part of this claim has been sold or assigned to a third party.

*Any person who knowingly files a statement of claim containing any false or misleading information is subject to criminal and civil penalties.*

\_\_\_\_\_  
Claimant's signature

\_\_\_\_\_  
Date

16. Send this completed Proof of Claim Form, postmarked by [\_\_\_\_\_] , 2013, to:

ACA Assurance in Liquidation  
55 South Commercial Street  
Manchester, New Hampshire 03101

**You should complete and send this form if you believe you have an  
actual or potential claim against ACA  
even if the amount of the claim is presently uncertain.**

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Docket No. 06-E-0380

In the Matter of the Rehabilitation of ACA Assurance

**SERVICE LIST**

Roger A. Seigny, Commissioner  
Department of Insurance  
21 S. Fruit Street, Suite 14  
Concord, NH 03301

Peter A. Bengelsdorf, Special Deputy Liquidator  
ACA Assurance  
61 Broadway, 6<sup>th</sup> Floor  
New York, NY 10006-2504

Steven J. Lauwers, Esq.  
Andrew W. Serell, Esq.  
Rath, Young & Pignatelli, PC  
PO Box 1500  
Concord, NH 03302-1500

Bruce A. Harwood, Esq.  
Margaret E. Probish, Esq.  
Sheehan, Phinney, Bass + Green, PA  
1000 Elm Street  
PO Box 3701  
Manchester, NH 03105-3701